

**CONTRACT #5**  
**RFS # 339.03-109**  
**FA # Pending**

**Mental Health and  
Developmental Disabilities**

**VENDOR:**  
**FEI.COM, Inc.**



RECEIVED

APR 30 2008

STATE OF TENNESSEE  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
MENTAL HEALTH SERVICES  
Cordell Hull Building - 3<sup>rd</sup> Floor  
425 5<sup>th</sup> Avenue North  
Nashville, Tennessee 37243

FISCAL REVIEW

April 28, 2009

MEMORANDUM TO: Fiscal Review Committee  
FROM: Linda Parker, Director *Linda Parker*  
Program Support  
RE: Non-Competitive Contract Request

This non competitive contract request is for authorization to continue to contract with FEI.Com for software support, maintenance and hosting of the web-based voucher system used to support the Access to Recovery Grant (ATR II). The initial contract with FEI.com was in 2005 to provide services for the ATR I grant which was procured through a non-competitive process. When the State of Tennessee was awarded the ATR II Grant in September 2007, FEI.com was again chosen through the non-competitive process to continue to provide services. Their knowledge of the current system and expertise has allowed them to be very responsive in meeting the needs of the Department.

The term of this contract will be July 1, 2008 through October 31, 2010. The non-competitive request, OIR Endorsement, and draft contract are attached.

Please let me know if you need additional information.

Thank you.

lp

**REQUEST: NON-COMPETITIVE CONTRACT****RECEIVED**

APPROVED

APR 30 2008

**FISCAL REVIEW**

Commissioner of Finance &amp; Administration

Date:

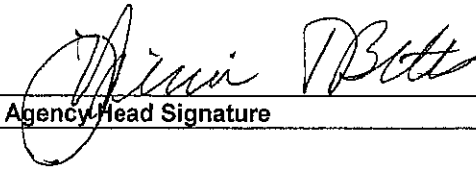
Each of the request items below indicates specific information that must be individually detailed or addressed as required.  
A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	RFS 339.03-109	
2) State Agency Name :	Department of Mental Health & Developmental Disabilities	
3) Service Caption :	Software Application Development, Maintenance and Hosting	
4) Proposed Contractor :	FEI.com, Inc.	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	7/1/2008	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	10/31/2010	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$500,000	
8) Approval Criteria : (select one)	<input checked="checked" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :		
<p>This contract will include software support, maintenance, and hosting of the web-based voucher system used to support the Access to Recovery grant (ATR II). The primary purpose of this contract is to continue the services that have been provided by FEI.com to enhance and modify the current TN-WITS web application system. The hosting and enhancements will improve the functioning of the system for reporting requirements and provide ATR staff with technical assistance for the remainder of the grant term (October 2010).</p>		
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :		
<p>In order to meet the requirements of receiving the ATR II grant funds from SAMHSA, the state is required to have a voucher management system in order to track, monitor, and allow service recipients choice as to a service provider. FEI.com has been providing the hosting and development of TN-WITS to the Division of Alcohol and Drug Abuse Services for ATR II since January 1, 2008. We have a very comprehensive web-based system that allows us to perform the required functions of ATR II. Continuation of this contract will allow for the provision of technical support and minor enhancements that may be needed as we proceed through to the end of the grant term.</p>		

<b>11) Explanation of Whether the Procuring Agency Bought the Service in the Past, &amp; if so, What Procurement Method It Used :</b>		
<p>FEI.com was awarded a contract on August 1, 2005 to provide this service for the previous grant (ATR I). This procurement came about through the competitive negotiation process. When the state of Tennessee was awarded ATR II in September 2007, FEI was again contracted to continue providing services to the State of Tennessee due to its familiarity with ATR and our existing database. This procurement came about through a request for Non-Competitive Contract.</p>		
<b>12) Name &amp; Address of the Proposed Contractor's Principal Owner(s) :</b> (not required if proposed contractor is a state education institution)		
<p>Jiaozhong Gu, CEO  FEI.com, Inc.  8930 Old Annapolis road, Suite C  Columbia, MD 21045  TEL: (443) 270-5101  FAX: (410) 712-0220  Email: jgu@feinfo.com</p>		
<b>13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :</b>		
<p>FEI.com, incorporated in 1999, has provided IT services to the Center for Substance Abuse Treatment (CSAT), Center for Substance Abuse Prevention (CSAP), Center for Mental Health Services (CMHS), State of Illinois, State of Alaska, State of Wyoming, State of Hawaii and the State of Maryland. They were the original developers of the WITS system, which is used by several states in support of the web-based voucher programs through the Access to Recovery (ATR) grants. FEI.com has had a successful relationship with the Division of Alcohol and Drug Abuse Services since 2005. This has been demonstrated through the software development, technical assistance, and knowledge of ATR requirements. We believe that it was their expertise and guidance during ATR I that gave Tennessee an added advantage when SAMHSA highlighted Tennessee as a leading ATR I state.</p>		
<b>14) Documentation of Office for Information Resources Endorsement :</b> (required <u>only</u> if the subject service involves information technology)		
<b>select one:</b>	<input type="checkbox"/> Documentation Not Applicable to this Request	<input checked="" type="checkbox"/> Documentation Attached to this Request
<b>15) Documentation of Department of Personnel Endorsement :</b> (required <u>only</u> if the subject service involves training for state employees)		
<b>select one:</b>	<input checked="" type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
<b>16) Documentation of State Architect Endorsement :</b> (required only if the subject service involves construction or real property related services)		
<b>select one:</b>	<input checked="" type="checkbox"/> Documentation Not Applicable to this Request	<input type="checkbox"/> Documentation Attached to this Request
<b>17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :</b>		
<p>Currently, the Department has a contract in place with FEI.com for a web-based voucher management system for ATR II. This contract is a continuation from the ATR I contract which was procured in 2005. Since this procurement, FEI has been very responsive in meeting the needs of the Department with ATR I and ATR II. Because of FEI.com 's previous working history and knowledge of the system and ATR, we request authorization to continue contracting with them..</p>		
<b>18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :</b> (Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)		
<p>FEI.com has a history with the State, having contracted for ATR1 services. In addition to their expertise associated with the system in Tennessee, they provide WITS and technical assistance to many other ATR Grantees. Being a part of the FEI.com provider network, this allows us to take advantage of "cost sharing" of system costs. This cost sharing pool allows technical support and system upgrades to be purchased at a fraction of the total cost. In addition, FEI.com has several contacts and contracts with SAMHSA which keeps them abreast of the latest ATR mandates and regulations. Their relationship with SAMHSA and other ATR Grantees has been beneficial to Tennessee because they have provided suggestions and recommendations to improve our functions of ATR II.</p>		

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

A handwritten signature in cursive script, appearing to read "Minnie D. Bette".

Agency Head Signature

4/25/08

Date



# FAX/EMAIL TRANSMITTAL

to Request OIR Procurement Endorsement

TO : Jane Chittenden, Director  
OIR Procurement & Contract Management FAX # 741-6164

FROM : Heather Gundersen, IT Director, MHDD FAX # 253-5717

DATE : 3/27/08

RFS # 339.03-100-08

RE : Procurement Endorsement — TNWITS application; FEI.com

INFORMATION SYSTEMS PLAN PROJECT: CI97O100

NUMBER OF FAX PAGES (including cover) : N/A

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Heather Gundersen at 532-6603.

**Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).**

Thank you for your help.

Attachment(s)

Must include the entire contract or amendment document and where applicable, the non-competitive contract or amendment request form. The original contract and any prior amendments that were applied to the same section of the contract must be provided with an amendment. Electronic copies of the contract, amendments, and request form without signature are acceptable.

RFP documents must be provided in electronic form.

OIR Endorsement :

Mark Bengel (x)

3/31/08

OIR Chief Information Officer

Date

# CONTRACT SUMMARY SHEET

121107

<b>RFS #</b>	<b>Contract #</b>
<b>339.03-109-09</b>	<b>FA-09-</b>
<b>State Agency</b>	<b>State Agency Division</b>
Department of Mental Health and Developmental Disabilities	Alcohol and Drug Abuse Services
<b>Contractor Name</b>	<b>Contractor ID # (FEIN or SSN)</b>
FEI.com, Inc.	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 52-2067447-00

<b>Service Description</b>			
Software application development, maintenance and hosting of web-based voucher system for Access to Recovery Grant II			
<b>Contract BEGIN Date</b>	<b>Contract END Date</b>	<b>Subrecipient or Vendor?</b>	<b>CFDA #</b>
07/01/08	6/30/09	Vendor	93.275

<b>Mark Each TRUE Statement</b>	
<input checked="" type="checkbox"/> Contractor is on STARS	<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts

<b>Alloant Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>	<b>Funding Grant Code</b>	<b>Funding Subgrant Code</b>
339.03	40807	134734	11		
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
09		\$ 213,300.00			\$ 213,300.00
10		\$ 156,416.00			\$ 156,416.00
11		\$ 51,300.00			\$ 51,300.00
					\$ -
					\$ -
					\$ -
<b>TOTAL</b>	\$ -	\$ 421,016.00	\$ -	\$ -	\$ 421,016.00

<b>— COMPLETE FOR AMENDMENTS ONLY —</b>			<b>State Agency Fiscal Contact &amp; Telephone #</b>
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Gene Wood, Budget - 615/532-6676
			<b>State Agency Budget Officer Approval</b>
			<b>Funding Certification</b> (certification required by T.G.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
<b>TOTAL</b>	\$ -	\$ -	
<b>End Date</b>			

<b>Contractor Ownership</b> (complete for ALL base contracts—N/A to amendments or delegated authorities)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Small Business
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> Government
<input type="checkbox"/> NOT Minority/Disadvantaged			

<b>Contractor Selection Method</b> (complete for ALL base contracts—N/A to amendments or delegated authorities)		
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation*	<input type="checkbox"/> Alternative Competitive Method*
<input checked="" type="checkbox"/> Non-Competitive Negotiation*	<input type="checkbox"/> Negotiation w/ Government (ID,GG,GU)	

<b>Procurement Process Summary</b> (complete for Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)
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FEI.com is the original developer of the WITS system, which is used by several states in support of the web-based voucher programs initiated through Access to Recovery Grants and which has been successfully implemented for the Tennessee Access to Recovery Grant 1. Since the ATR II Grant is basically a continuation of the program and services begun under ATR 1 with the same need for a voucher system, the Grantee has the expertise, willingness and capability to continue and enhance these services.

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
AND  
FEI.COM, INC.**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, hereinafter referred to as the "State" and FEI.com, Inc., hereinafter referred to as the "Contractor," is for the provision of Software Application Development, Maintenance and Hosting of the web-based voucher system used to support the Access to Recovery Grant II (ATR II), as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 52-2067447

Contractor Place of Incorporation or Organization: Maryland

**A. SCOPE OF SERVICES:**

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Enhancements:

a. Contractor shall design and conduct beta development of the following enhancements agreed to by the State:

- (1) Upon creation of second voucher after a service recipient has returned for a second episode, the system shall display the number of units that are available by service that have not been utilized during the first episode of care.
- (2) Display announcements and notifications on the homepage of Tennessee Web Infrastructure for Treatment Services (TN-WITS) as follows:

i. Announcements and Notifications for Providers shall include:

- (a) Government Performance Results Act (GPRA) Reminder;
- (b) Monthly Cap Balance; and
- (c) Clients with no encounters in the last thirty (30) days.

ii. Announcements and Notifications for State Users shall include:

- (a) Number of missed GPRA documentation by Agency;
- (b) Total Access to Recovery (ATR) Fund Balance – Allocated, Expended, and Obligated but not expended;
- (c) Total Number of consumers enrolled;
- (d) Total Number of Methamphetamine service recipients; and



(e) Total Number of Criminal Justice service recipients.

- (3) Create report in voucher screen in TN-WITS that will show providers a list of all open vouchers by services and available units by service recipients.
- (4) Any other enhancements agreed to by the State and the Contractor in response to user recommendations.

A.3. Documentation:

Contractor shall provide Structured Query Language (SQL) Server Reporting Services (SSRS) user documentation in an editable electronic format, with the capability for printing in hard copy when required.

A.4. Training:

a. Contractor shall provide user training in the operation of the TN-WITS system as follows:

- (1) One (1) onsite one day (1) day sessions for the operation of the TN-WITS Core System; and
- (2) Five (5) WebEx online sessions for the operation of TN-WITS.

A.5. Support:

Contractor shall provide Tier 3 User Support to include interfacing with State support staff on all user and technical issues. Additionally, the Contractor shall provide ongoing maintenance and application support for twenty-four (24) months of the contract term

A.6. Hosting:

a. Contractor shall host the TN-WITS application with the following services:

- (1) Highly Secure Hosting Environment;
- (2) Biometric Access Required;
- (3) Monitored twenty-four hours per day/seven days per week (24/7);
- (4) Fully redundant Uninterruptible Power Supplies, guaranteeing a ninety-nine and nine-tenths percent (99.9%) 'up time' during prime time as defined as 8:00 am – 5:00 pm Central time, Monday through Friday;
- (5) Network redundancy;
- (6) Cages and racks that require access codes and biometrics to access;
- (7) Multiple Inline Firewalls;
- (8) Internet Connectivity at ten (10) megabits per second (mbps); and
- (9) Database Backup (Nightly).

**A.7. Structured Query Language (SQL) Server Reporting Services (SSRS):**

**a. Contractor shall provide SSRS updates, support, training, and hosting as follows:**

- (1) Provision of SSRS training consisting of two (2) onsite trainings and five (5) WebEx online trainings for SSRS operation;
- (2) Provision of intensive user support for on-demand reports;
- (3) Provision of typical user support for report creation; and;
- (4) Hosting of the SSRS application.

**B. CONTRACT TERM:**

This Contract shall be effective for the period commencing on July 1, 2008 and ending on October 31, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Four Hundred Twenty-One Thousand Sixteen Dollars (\$421,016). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm.** The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology.** The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Year 1 July 1, 2008 – June 30, 2009	Year 2 July 1, 2009 – June 30, 2010	Year 3 July 1, 2010 – October 31, 2010
Provide monthly hosting of the TN-WITS application per section A.6. Hosting will occur throughout the contract term. \$1,467 per month for twenty-eight (28) months.	\$17,604	\$17,604	\$5,868
Provide monthly hosting of SSRS application per section A.7. (4). Hosting will occur throughout the contract term. \$708 per month for twenty-eight (28) months.	\$8,496	\$8,496	\$2,832
Provide TN-WITS user training per section A.4. The on-site training session and two (2) WebEx sessions shall be conducted within Year 1 of the Contract term. Two (2) WebEx sessions shall be conducted within Year 2 of the Contract term. One (1) WebEx session shall be conducted within Year 3 of the Contract term. One (1) on-site training at \$2,500 Five (5) WebEx sessions at \$1,000 per session	\$5,500	\$2,000	\$1,000
Provide SSRS updates and trainings per Section A.7.a.(1). Training shall be conducted after completion of SSRS updates and as scheduled by the Grantee in consultation with the State. One (1) on-site and three (3) WebEx sessions shall be conducted within Year 1 of the Contract term. One (1) on-site and one (1) WebEx session shall be conducted within Year 2 of the Contract term. One (1) WebEx session shall be conducted within Year 3 of the Contract term. Two (2) onsite trainings at \$2,500 per training Five (5) WebEx sessions at \$1,000 per session	\$5,500	\$3,500	\$1,000
Provide monthly Tier 3 user support and ongoing maintenance and application support per Section A.5. Tier 3 support and ongoing maintenance and application support will occur throughout the contract term for twenty-eight (28) months at a rate of \$7,400 per month	\$88,800	\$88,800	\$29,600
Provide monthly typical user support for report creation per Section A.7.a. (3). Typical user support will occur throughout the contract term for twenty-four (24) months at a rate of \$1,000 per month.	\$12,000	\$12,000	\$0
Provide monthly intensive user support for on-demand reports per Section A.9.a. (2). Intensive user support will occur for 12 months of contract term for at a rate of \$3,000 per month.	\$36,000	0	0
Complete the enhancements as outlined in section A.2. for the improvements of the TN-WITS core system. Target completion date for all enhancements is end of contract term. Payments for enhancements will occur upon testing and acceptance by Division Data Coordinator.	\$23,000	\$13,016	\$0
Additional Services will be provided as needed and as approved by the State throughout the contract term, at a rate of \$110 per hour not to exceed three	\$11,000	\$11,000	\$11,000

hundred (300) hours.			
Provide SSRS user documentation per section A.3. Target completion date September 30, 2008.	\$6,400	\$0	\$0

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:
- Department of Mental Health and Developmental Disabilities  
Fiscal Services  
10<sup>th</sup> Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, Tennessee 37243
- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Contractor);
  - (2) Invoice Date;
  - (3) Invoice Period (period to which all invoiced charges are applicable);
  - (4) Contract Number (assigned by the State to this Contract);
  - (5) Account Name: Department of Mental Health and Developmental Disabilities, Division of Alcohol and Drug Abuse Services;
  - (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
  - (7) Contractor Name;
  - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
  - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
  - (10) Contractor Remittance Address;
  - (11) Complete Itemization of Charges, which shall detail the following:
    - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
    - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
    - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
    - iv. Amount Due by Service; and
    - v. Total Amount Due for the invoice period.
- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
  - (2) not include any future work but will only be submitted for completed service; and

- (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Linda Parker, Director  
Office of Program Support  
Division of Policy and Legislation  
Tennessee Department of Mental Health and Developmental Disabilities  
Third Floor, Cordell Hull Building  
425 Fifth Avenue North  
Nashville, TN 37243  
EMAIL: [Linda.Parker@state.tn.us](mailto:Linda.Parker@state.tn.us)  
Telephone # (615) 532-6741  
FAX # (615) 532-2419

The Contractor:

Jiao Zhong Gu, CEO  
FEI.com, Inc.  
8930 Old Annapolis Road, Suite C  
Columbia, MD 21045  
EMAIL: [jgu@feinfo.com](mailto:jgu@feinfo.com)  
Telephone # (443) 270-5101  
FAX # (410) 712-0220

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract.



Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Grantee shall carry adequate liability and other appropriate forms of insurance.
- a. The Grantee shall maintain, at minimum, the following insurance coverage:
    - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
    - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
    - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
    - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
  - b. At any time State may require the Grantee to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Grant Contract.
- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Grantee by the State or acquired by the Grantee on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Grantee to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Grantee's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Grantee of this Grant Contract; previously possessed by the Grantee without written obligations to the State to protect it; acquired by the Grantee without written restrictions against disclosure from a third party which, to the Grantee's

knowledge, is free to disclose the information; independently developed by the Grantee without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Grantee to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Grantee due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Grant Contract.

- E.7. HIPAA Compliance. The State and the Grantee shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. The Grantee warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
  - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the grant so that both parties will be in compliance with HIPAA.
  - c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and the Grantee in compliance with HIPAA. This provision shall not apply if information received by the State under this grant is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. Rule 2 Compliance. The State and the Grantee shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.
- a. The Grantee warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Grant Contract.
  - b. The Grantee warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the grant so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.
  - c. The State and the Grantee will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Grantee in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this grant is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.9. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created,

designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

#### E.10. Ownership of Software and Work Products.

- a. Definitions.
  - (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
  - (2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.
  - (3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
  - (4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
  - (5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.
- b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
  - (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.
  - (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
  - c. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.11. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
  - E.12. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
  - E.13. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
  - E.14. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER

TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S  
TOLL-FREE HOTLINE: 1-800-232-5454

E.15. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.17. Hold Harmless. The Grantee agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part

of the Grantee, its employees, or any person acting for or on its or their behalf relating to this Grant Contract. The Grantee further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Grant Contract or otherwise enforce the obligations of the Grantee to the State.

In the event of any such suit or claim, the Grantee shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Grantee written notice of any such claim or suit, and the Grantee shall have full right and obligation to conduct the Grantee's own defense thereof. Nothing contained herein shall be deemed to accord to the Grantee, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.18. Drug-Free Workplace. The Grantee agrees that it shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.
- E.19. Additional Subcontracting Requirements. If subcontracts are approved by the State, they shall contain, in addition to those sections identified in D.5., sections on "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall be the prime contractor and shall be responsible for all work performed.
- E.20. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

**IN WITNESS WHEREOF:**

**FEI.COM, INC.:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES:**

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**VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN,  
COMMISSIONER**

**DATE**

**APPROVED:**

---

**M. D. GOETZ, JR., COMMISSIONER  
DEPARTMENT OF FINANCE AND ADMINISTRATION**

**DATE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	FA-09-
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	FEI.com, Inc.
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)</b>	52-2067447-00

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**